

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

JOE W. KUEFLER, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

WEBLOYALTY.COM, INC. and  
FANDANGO, INC. d/b/a  
FANDANGO.COM,

Defendants.

CIVIL ACTION NO. 06-cv-11620-JLT

Oral Argument Requested

**DEFENDANTS' MOTION FOR SANCTIONS**

Defendants hereby respectfully request that the Court deny Plaintiff's Motion for Rule 56(f) Discovery or, in the alternative, impose any other sanction (including attorneys' fees and costs) as a sanction for the improper issuance and service of a third-party subpoena on the Connecticut Business Bureau.

Plaintiff served a third party subpoena on the Connecticut Better Business Bureau (the "BBB"), and did so without providing notice to the Defendants. By issuing a third party subpoena to the BBB on January 11, 2007, Plaintiff violated (i) the Court's Local Rule 26.2, (ii) Rule 26(d) of the Federal Rules of Civil Procedure, and (iii) Rule 45(b)(1) of the Federal Rules of Civil Procedure. In addition, denial of the Rule 56(f) motion is an appropriate sanction because the improper subpoena impermissibly sought discovery that was directly at issue in that motion. The motion had been fully briefed at the time the subpoena was issued and this Court

has not yet ruled on the motion. The Rules did not permit issuance of the subpoena, nor had the Court given leave to obtain the discovery sought.

For these reasons, and for the reasons set forth more fully in the accompanying memorandum of law, Defendants respectfully request that the Court grant their Motion for Sanctions and, in doing so, deny Plaintiff's Motion for Rule 56(f) Discovery or, in the alternative, impose any other sanction, including attorney's fees and costs, the Court deems appropriate.

**REQUEST FOR ORAL ARGUMENT**

Webloyalty.com, Inc. and Fandango, Inc. request oral argument pursuant to Local Rule 7.1(D).

Respectfully submitted,

WEBLOYALTY.COM, INC.  
FANDANGO, INC.

By Their Attorneys

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Dated: February 20, 2007

**LOCAL RULE 7.1 CERTIFICATION**

I, Gabrielle R. Wolohojian, hereby certify that through various correspondence I conferred with counsel for the plaintiff in a good faith attempt to narrow or resolve the issues presented by this motion and that we were unable to do so.

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/s/ Gabrielle R. Wolohojian

**Certificate of Service**

I, Joan S. Mitrou, hereby certify that a true and accurate copy of the above document has been filed and served through the Court's electronic filing system, this 20<sup>th</sup> day of February, 2007.

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/s/ Joan S. Mitrou